IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.405 OF 2004
IN
COMPANY PETITION NO.432 OF 1994

M/s.S.S.Enterprises Applicants

versus

The Official Liquidator of
M/s.Poddar Soya Products Ltd. Respondent

Mr.A.A.Siddiqui for applicants.
Ms.Mili Thakkar with S.V.Thakkar for R-2.
Ms.K.V.Gautam, Act.O.L.present.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th July 2006

PC :

1. By this Company Application the purchaser of movable property of the company in liquidation urges that all movables are not delivered to him as per the inventory and identification by the Valuer.

2. This is an unfortunate matter and both sides are responsible for wasting valuable time of this Court. On 15th April 2004 this company application has been filed and the applicant

states that he has purchased the movables as early as in 2003. After two years and some months and nearly three years of the sale, all that remains for debate is whether 41 electric poles which are at site when the company in liquidation was carrying on business, can be said to be movable or immovable property.

3. From a perusal of the report of Official Liquidator including minutes of the meeting and the affidavit in reply, it is clear that material has adequate not been placed by the purchaser of the immovable property to show that the electrical poles (41 in number) can be termed as immovable property. Admittedly, the land and building which was put up for sale, has been disposed of in favour of the purchaser of the immovable property and it is not in dispute that possession of the same has been handed over.

4. Now, when the company in liquidation has stopped business and all these poles have scrap value, both sides agreed about two years back that a valuation be made afresh of these items and based upon the report of the Valuer, appropriate orders can be passed by this Court.

5. According to the applicant the controversy still remains and the poles are movables. Learned advocate appearing for the purchaser of the immovable property, on the other hand, urges that the order passed by this Court (J.N.Patel, J.) on 2nd July 2004 and 16th July 2004 concludes the issue.

6. After having perused the order with the assistance of learned advocates for both sides I find nothing therein which would show that this Court has held that electrical poles are immovable property.

7. Therefore, it was for the purchaser of the immovable property to show that other than land and building/structure made up of RCC Walls and roof, these electrical poles are also included and can be termed as immovable property. No material in that behalf is placed before me except relying on some photographs to show that they are embeded in earth. It would not be proper to rely upon these photographs in the absence of any other material. It is doubtful whether these photographs can conclusively prove that electric poles are immovable property. It is for this reason that I am rejecting the

contention of Ms.Thakkar that the poles are embedded in earth and therefore, answer the description and definition of the term "Immovable Property" appearing in Transfer of Property Act, 1882.

8. Therefore, company application is disposed of by directing that the Official Liquidator shall, in accordance with the valuation report, hand over 41 electrical poles to the applicants, provided, of course, the value thereof is tendered by it. This is because both sides agreed that a fresh valuation be taken, they agreed to share expenses of this valuation and on the basis that whatever is the value of these articles, would be tendered before the same are physically lifted from the site. In such circumstances, it is not possible to grant blanket liberty to lift the articles and not pay the amount which has been determined by the Valuer. Therefore, the applicant will have to tender the amount as per the valuation report and needless to state that if the same is not tendered within time stipulated by the Official Liquidator in that behalf, then it is open for the Official Liquidator to hand over the same to respondent no.2, subject of course to respondent

no.2 paying the amount within the time stipulated by Official Liquidator.

9. This order would serve the ends of justice otherwise even after all claims of both sides being belated parties would still litigate before a wrong forum (Company Court) and it is not for the Company Court to decide as to whether the poles are movable or immovable property so also the right, title and interest to the same. As far as 20 M.S. Grills are concerned, applicant's advocate after taking instructions, states that the applicants are not interested in lifting the same. It is open for Official Liquidator to deal with them appropriately including allowing respondent no.2 to lift them. Similarly, if electric poles are not lifted by the applicant or respondent no.2, Official Liquidator is at liberty to dispose off the same in accordance with law.

(S.C.DHARMADHIKARI, J.)